

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 570

**Introduced by Assembly Member Villines
(Principal coauthor: Assembly Member Benoit)**

February 16, 2005

An act to amend ~~Section 23152~~ of Sections 2800.2 and 2800.3 of, and to add Section 2800.25 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 570, as amended, Villines. ~~Driving while under the influence~~
Vehicles: fleeing a peace officer.

(1) Existing law makes it a misdemeanor for a person operating a motor vehicle to willfully flee or otherwise attempt to elude a pursuing peace officer's vehicle under certain conditions. If the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property, the offense is punishable as a misdemeanor or a felony.

This bill would revise these provisions of existing law to codify the provision relating to willful or wanton disregard for the safety of persons separately from the provision relating to willful or wanton disregard for the safety of property. The bill would delete the definition of "willful or wanton disregard for the safety of persons."

(2) Existing law makes it either a misdemeanor or felony to willfully flee or otherwise attempt to elude a pursuing peace officer's vehicle where that unlawful act proximately causes death or serious bodily injury.

This bill would specify that a violation of the above does not preclude the imposition of a greater sentence under any other provision of law, including, but not limited to, a sentence based on a conviction of the crime of murder.

~~Under existing law, it is unlawful for a person who is under the influence of an alcoholic beverage or drug, or under the combined influence of an alcoholic beverage and drug, to drive a vehicle.~~

~~This bill would make technical, nonsubstantive changes in that law.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 23152 of the Vehicle Code, as amended~~
2 ~~by Section 31 of Chapter 455 of the Statutes of 1995, is amended~~
3 ~~to read:~~

4 ~~SECTION 1. Section 2800.2 of the Vehicle Code is amended~~
5 ~~to read:~~

6 ~~2800.2. (a) If a person flees or attempts to elude a pursuing~~
7 ~~peace officer in violation of Section 2800.1 and the pursued~~
8 ~~vehicle is driven in a willful or wanton disregard for the safety of~~
9 ~~persons or property, the person driving the vehicle, upon~~
10 ~~conviction, shall be punished by imprisonment in the state prison,~~
11 ~~or by confinement in the county jail for not less than six months~~
12 ~~nor more than one year. The court may also impose a fine of not~~
13 ~~less than one thousand dollars (\$1,000) nor more than ten~~
14 ~~thousand dollars (\$10,000), or may impose both that~~
15 ~~imprisonment or confinement and fine.~~

16 ~~(b) For purposes of this section, a willful or wanton disregard~~
17 ~~for the safety of persons or property includes, but is not limited~~
18 ~~to, driving while fleeing or attempting to elude a pursuing peace~~
19 ~~officer during which time either three or more violations that are~~
20 ~~assigned a traffic violation point count under Section 12810~~
21 ~~occur, or damage to property occurs.~~

22 ~~SEC. 2. Section 2800.25 is added to the Vehicle Code, to~~
23 ~~read:~~

24 ~~2800.25. (a) If a person flees or attempts to elude a pursuing~~
25 ~~peace officer in violation of Section 2800.1 and the pursued~~
26 ~~vehicle is driven in a willful or wanton disregard for the safety of~~
27 ~~property, the person driving the vehicle, upon conviction, shall~~
28 ~~be punished by imprisonment in the state prison, or by~~
29 ~~confinement in the county jail for not less than six months nor~~
30 ~~more than one year. The court may also impose a fine of not less~~
31 ~~than one thousand dollars (\$1,000) nor more than ten thousand~~

1 dollars (\$10,000), or may impose both that imprisonment or
2 confinement and fine.

3 (b) For the purposes of this section, a willful or wanton
4 disregard for the safety of property includes, but is not limited to,
5 driving while fleeing or attempting to elude a pursuing peace
6 officer during which time either three or more violations that are
7 assigned a traffic violation point count under Section 12810
8 occur, or damage to property occurs.

9 SEC. 3. Section 2800.3 of the Vehicle Code is amended to
10 read:

11 2800.3. (a) Whenever willful flight or attempt to elude a
12 pursuing peace officer in violation of Section 2800.1 proximately
13 causes death or serious bodily injury to any person, the person
14 driving the pursued vehicle, upon conviction, shall be punished
15 by imprisonment in the state prison for three, four, or five years,
16 by imprisonment in the county jail for not more than one year, or
17 by a fine of not less than two thousand dollars (\$2,000) nor more
18 than ten thousand dollars (\$10,000), or by both that fine and
19 imprisonment.

20 ~~For~~

21 (b) For purposes of this section, “serious bodily injury” has
22 the same meaning as defined in paragraph (4) of subdivision (f)
23 of Section 243 of the Penal Code.

24 (c) Subdivision (a) does not preclude the imposition of a
25 greater sentence under any other provision of law, including, but
26 not limited to, a sentence based on a conviction of the crime of
27 murder.

28 SEC. 4. It is the intent of the Legislature in enacting this act
29 to address the issues raised in the opinion of the California
30 Supreme Court in *People v. Howard* (2005) 34 Cal.4th 1129 by
31 revising the codification of the provisions in the Vehicle Code
32 prohibiting fleeing from or attempting to elude a pursuing peace
33 officer, to do all of the following:

34 (a) Ensure that all violations of Section 2800.1 of the Vehicle
35 Code that are punishable under Section 2800.2 of that code will
36 be found to be “inherently dangerous to human life.”

37 (b) Maintain in a new code section the existing penalties for
38 other types of violations of Section 2800.1 of the Vehicle Code
39 that were found by the California Supreme Court to be not
40 necessarily inherently dangerous to human life.

1 (c) *Affirm that imposition of a sentence under Section 2800.3*
2 *of the Vehicle Code does not preclude the imposition of a greater*
3 *sentence under any other provision of law, including, but not*
4 *limited to, a sentence based on a conviction of the crime of*
5 *murder.*

6 ~~23152. (a) It is unlawful for a person who is under the~~
7 ~~influence of an alcoholic beverage or drug, or under the~~
8 ~~combined influence of an alcoholic beverage and drug, to drive a~~
9 ~~vehicle.~~

10 ~~(b) It is unlawful for a person who has 0.08 percent or more,~~
11 ~~by weight, of alcohol in his or her blood to drive a vehicle.~~

12 ~~For purposes of this article and Section 34501.16, percent, by~~
13 ~~weight, of alcohol in a person's blood is based upon grams of~~
14 ~~alcohol per 100 milliliters of blood or grams of alcohol per 210~~
15 ~~liters of breath.~~

16 ~~In a prosecution under this subdivision, it is a rebuttable~~
17 ~~presumption that the person had 0.08 percent or more, by weight,~~
18 ~~of alcohol in his or her blood at the time of driving the vehicle if~~
19 ~~the person had 0.08 percent or more, by weight, of alcohol in his~~
20 ~~or her blood at the time of the performance of a chemical test~~
21 ~~within three hours after the driving.~~

22 ~~(c) It is unlawful for a person who is addicted to the use of a~~
23 ~~drug to drive a vehicle. This subdivision does not apply to a~~
24 ~~person who is participating in a narcotic treatment program~~
25 ~~approved pursuant to Article 3 (commencing with Section~~
26 ~~11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and~~
27 ~~Safety Code.~~

28 ~~(d) It is unlawful for a person who has 0.04 percent or more,~~
29 ~~by weight, of alcohol in his or her blood to drive a commercial~~
30 ~~motor vehicle, as defined in Section 15210.~~

31 ~~In a prosecution under this subdivision, it is a rebuttable~~
32 ~~presumption that the person had 0.04 percent or more, by weight,~~
33 ~~of alcohol in his or her blood at the time of driving the vehicle if~~
34 ~~the person had 0.04 percent or more, by weight, of alcohol in his~~
35 ~~or her blood at the time of the performance of a chemical test~~
36 ~~within three hours after the driving.~~

37 ~~(e) This section shall become operative on January 1, 1992,~~
38 ~~and shall remain operative until the director determines that~~
39 ~~federal regulations adopted pursuant to the Commercial Motor~~
40 ~~Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.)~~

1 contained in Section 383.51 or 391.15 of Title 49 of the Code of
2 Federal Regulations do not require the state to prohibit operation
3 of commercial vehicles when the operator has a concentration of
4 alcohol in his or her blood of 0.04 percent by weight or more.

5 (f) The director shall submit a notice of the determination
6 under subdivision (e) to the Secretary of State, and this section
7 shall be repealed upon the receipt of that notice by the Secretary
8 of State.

9 SEC. 2. Section 23152 of the Vehicle Code, as amended by
10 Section 32 of Chapter 455 of the Statutes of 1995, is amended to
11 read:

12 23152. (a) It is unlawful for a person who is under the
13 influence of an alcoholic beverage or drug, or under the
14 combined influence of an alcoholic beverage and drug, to drive a
15 vehicle.

16 (b) It is unlawful for a person who has 0.08 percent or more,
17 by weight, of alcohol in his or her blood to drive a vehicle.

18 For purposes of this article and Section 34501.16, percent, by
19 weight, of alcohol in a person's blood is based upon grams of
20 alcohol per 100 milliliters of blood or grams of alcohol per 210
21 liters of breath.

22 In a prosecution under this subdivision, it is a rebuttable
23 presumption that the person had 0.08 percent or more, by weight,
24 of alcohol in his or her blood at the time of driving the vehicle if
25 the person had 0.08 percent or more, by weight, of alcohol in his
26 or her blood at the time of the performance of a chemical test
27 within three hours after the driving.

28 (e) It is unlawful for a person who is addicted to the use of a
29 drug to drive a vehicle. This subdivision does not apply to a
30 person who is participating in a narcotic treatment program
31 approved pursuant to Article 3 (commencing with Section
32 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and
33 Safety Code.

34 (d) This section shall become operative only upon the receipt
35 by the Secretary of State of the notice specified in subdivision (f)
36 of Section 23152, as added by Section 25 of Chapter 1114 of the
37 Statutes of 1989.